

6. (Amended) The hair cosmetic formulation according to Claim 5, wherein the content of ingredient (A) ranges from 0.3 to 0.8 %, based on the weight of the formulation.

Please amend Claim 10 as follows:

10. (Amended) The hair cosmetic formulation according to Claim 9, wherein the aromatic alcohol solvent is a member selected from the group consisting of benzyl alcohol, phenylethyl alcohol, phenoxyethanol, phenoxyisopropanol, α -methylbenzyl alcohol, α,α -dimethylbenzyl alcohol, α -propylbenzyl alcohol, 2-benzyloxyethanol and 3-benzyloxybutanol. --

REMARKS

Claim 4 has been canceled. Claims 1-3 and 5-16 are active in the case.
Reconsideration is respectfully requested.

Claim Rejection, 35 U.S.C. §112

The amendment to Claim 5 is believed to have obviated the basis for the objection to the claim. Further Claim 10 has been amended by adding proper Markush language to the claim. Withdrawal of the rejection is respectfully requested.

The present invention relates to a hair cosmetic formulation.

Prior Art Rejection

In hair dye and coloring formulations, alkaline agents such as ammonia and monoethanolamine are frequently incorporated therein. However, these components are known to possess objectionable odors and therefore there has been a long standing need to mask the odors which these materials give-off. Accordingly, the objective of the present

invention is to provide a hair cosmetic formulation which effectively masks the odors given-off by the ammonia, monoethanolamine and/or aromatic penetration promoters which are present in the cosmetic formulation. The effective masking of these odors has now been accomplished by the incorporation of a fragrance ingredient in the formulation which comprises cis-3-hexenol.

Claims 1-3, 5, 6, 9-11 and 16 stand rejected based on 35 U.S.C. 102(b) as anticipated by Sekiguchi et al, U. S. Patent 5,190,747. This ground of rejection is respectfully traversed.

Applicants submit that the Sekiguchi et al patent is of limited relevance to the present invention as claimed in that it is directed to a substantially tasteless nonionic surface active agent which does not have a bitter or oily taste, but has a satisfactory foaming power. (See column 1, lines 44-47) At the closest point of approach to the present invention, the patent discloses hair shampoo compositions which contain the surface active agent of the patent. (Col 8, lines 54 et seq) However, there is no mention of hair dye or coloring compositions therein, and certainly not hair dye or coloring formulations which are oxidation hair coloring formulation or hair bleaching formulations and contain at least one of ammonia, monoethanolamine or aromatic penetration promoters. Obviously, since the patent does not mention hair dyeing or coloring formulations which contain at least one of ammonia, monoethanolamine or aromatic penetration promoters, the patent could not possibly and does not teach how to effectively mask the odors of these hair treating components. On this basis alone the patent does not anticipate the invention as claimed.

Although, as the Examiner has noted, the patent contains a disclosure of cis-3-hexenol in the patent at column 23, line 62, this compound is only one example of a Fragrance II out of the very long list of fragrances disclosed as Flavor I and Perfume II in Table 15 as a possible component in three of the eight specific liquid detergents disclosed in Table 15!

None of these eight liquid detergents are disclosed as specifically containing cis-3-hexenol, and even if any one of these compositions did contain cis-3-hexenol, none of the compositions contain at least one of ammonia, monoethanolamine or an aromatic penetration promoter and none of the compositions are an oxidation hair coloring or hair bleaching formulation. Thus, the patent fails to anticipate the invention as claimed and withdrawal of the rejection is respectfully requested.

Claims 1-6, 9-11 and 16 stand rejected based on 35 U.S.C. 103(a) as obvious over JP-05310543 in view of Sekiguchi et al, U. S. Patent 5,190,747. This ground of rejection is respectfully traversed.

The JP '543 disclosure teaches a hair dye composition which is said to be capable of eliminating unpleasant odors of the compositions. However, the compositions which the reference discloses are acid hair dye compositions and not the oxidation hair coloring or hair bleaching formulations of the present invention. Thus, the hair dye compositions of the reference do not contain the at least one ammonia, monoethanolamine or aromatic penetration promoter component of the present formulation. Whatever odor the composition of the reference masks, it is not the odor given-off by ammonia, monoethanolamine or an aromatic penetration promoter component! Applicants contest the Examiner's stated position that the reference "teaches a hair dye composition containing a perfume such as cis-3-hexenol to produce a dye without an unpleasant odor," wherein the meaning of the phrase is understood to indicate that cis-3-hexenol functions as an odor masking ingredient of the composition. Although the reference specifically discloses cis-3-hexenol as a possible ingredient of the composition, it is not disclosed for its use as an odor masking ingredient, but as an example of a branched alcohol. The odor masking ingredients described by the reference are perfumes which have a musk or amber fragrance and are the likes of Pearlide,

Musk ketone and Amber core. Clearly, the '543 reference does not teach or suggest the composition as claimed in the present invention.

Applicants retain their comments as stated above concerning the Sekiguchi et al patent. Accordingly, it is clear that in the combined prior art, there is no teaching or suggestion of an oxidation hair coloring or hair bleaching formulation which contains at least one of ammonia, monoethanolamine or an aromatic penetration promoter as an essential ingredient of the composition. Even though each reference in some context discloses cis-3-hexenol, the disclosure is **not** in the context of masking the odor of the component (B) of the present formulation. Accordingly, the combined references fail to obviate the invention as claimed.

Claims 1-16 stand rejected based on 35 U.S.C. 103(a) as obvious over Lang et al, U. S. Patent 5,938,792 in view of Sekiguchi et al, U. S. Patent 5,190,747 and in view of JP-05310543. This ground of rejection is respectfully traversed.

Applicants retain their comments as stated above concerning both Sekiguchi et al and JP '543.

Although the Lang et al patent discloses an oxidation type of hair dying composition, examples of which contain aqueous ammonia, nevertheless, other than the briefest mention of a perfume as a composition excipient at column 8, lines 7, there is no teaching in the patent of the intent of providing a composition ingredient which masks the likes of ammonia. In this regard, there is **no** teaching or suggestion anywhere in the patent of cis-3-hexenol as a fragrance of utility in the composition of the patent. As to the Sekiguchi et al and JP '543 references, although each at some point discloses the use of cis-3-hexenol as a composition ingredient, neither discloses the compound in the context of masking odors of oxidation hair dye and hair bleaching formulations. As mentioned above, Sekiguchi et al only discloses cis-3-hexenol as one

out of a plurality of perfume ingredients which are useful in only three out of eight liquid detergents, none of which contain ammonia, monoethanolamine or an aromatic penetration promoter, and '543 only discloses cis-3-hexenol as an example of a branched alcohol material which in context is not disclosed for any fragrance property the compound may or may not have. It is **not** taught as useful in the masking of odors of the acid hair dye composition disclosed. Accordingly, the combined prior art is not believed to obviate the invention as claimed.

Applicants also disagree with the Examiner's stated opinion at page 5, lines 6-9 of the Office Action that it would have been obvious to one of skill to use Sekiguchi et al's perfume composition to mask the unpleasant odor produced by some of the components in the formulation as taught by '543. As noted above, in the context of Sekiguchi et al's teaching of cis-3-hexenol, the compound is only taught in the context of one out of many possible fragrances for use in only three out of eight liquid detergents, none of which contain ingredient (B) of the present composition and **none** of which are hair dying cosmetic formulations. Further, '543 discloses **acid** hair dying compositions, none of which contain ingredient (B) of the present composition. Rather, in '543, Pearlide, Musk ketone and Amber core are taught as the ingredients which mask whatever unpleasant odors are given-off by the disclosed acid hair dying composition, none of which are ammonia, monoethanolamine or aromatic penetration promoters. Clearly, a case of obviousness of the present invention has not been made out by the cited references. Withdrawal of the rejection is respectfully requested.

It is now believed that the application is in proper condition for allowance. Early notice to this effect is earnestly solicited.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, P.C.



Norman F. Oblon
Attorney of Record
Registration No. 24,618

Frederick D. Vastine, Ph.D.
Registration No.27,013



22850

TEL: 703-413-3000

FAX: 703-413-2220

I:\atty\FDV\August\211653US.am.wpd

DOCKET NO.: 211653US0
SERIAL NO.: 09/956,888

MARKED-UP COPY OF AMENDMENT

IN THE CLAIMS

Please cancel Claim 4 and amend Claim 1 as follows:

--1. (Amended) A hair cosmetic formulation, comprising:

(A) a fragrance ingredient comprising cis-3-hexenol; and

(B) at least one ingredient selected from the group consisting of ammonia, monoethanolamine and an aromatic alcohol penetration promoter, in an oxidation hair coloring or hair bleaching formulation.--

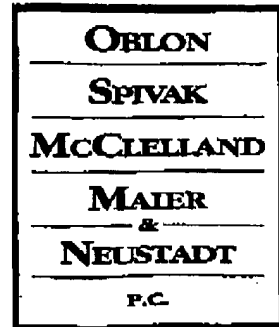
Please amend Claims 5 and 6 as follows:

--5. (Amended) The hair cosmetic formulation according to Claim 1, wherein the content of ingredient (A) ranges from 0.1 to 1.0 %, [especially 0.3 to 0.8 %], based on the weight of the [composition] formulation.

6. (Amended) The hair cosmetic formulation according to Claim 5, wherein the content of ingredient (A) ranges from 0.3 to 0.8 %, based on the weight of the [composition] formulation.--

Please amend Claim 10 as follows:

--10. (Amended) The hair cosmetic formulation according to Claim 9, wherein the aromatic alcohol solvent is a member selected from the group consisting of benzyl alcohol, phenylethyl alcohol, phenoxyethanol, phenoxyisopropanol, α -methylbenzyl alcohol, α,α -dimethylbenzyl alcohol, α -propylbenzyl alcohol, 2-benzyloxyethanol and 3-benzyloxybutanol.--



ATTORNEYS AT LAW

I hereby certify that this paper is being facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

Date: 10/22/02 Signature: F.D. Vastine
Attorney

To: Examiner: S. GOLLAMUDI Telephone Number: 305-2147

Group Art Unit: 1616

Facsimile No.: 703-746-7184 *25447*

From: Frederick D. Vastine, Ph.D. Registration No.: 27,013

Telephone Number: 703-412-6467

Date: October 22, 2002

RE: U.S. Application Serial Number: 09/956,888

Filed: September 21, 2001

Attorney Docket Number: 211653US0

TOTAL NUMBER OF PAGES INCLUDING THIS PAGE: 9
AMENDMENT W/ATTACHED MARKED-UP COPY

COMMENTS

In the event that any fees are due, including any fees required under 37 CFR 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge the required fees to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 CFR 1.136 for the necessary extension of time.